

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

60856

FILE: B-186379

DATE: May 11, 1976

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MATTER OF: Dumont Oscilloscope Laboratories, Inc.

DIGEST:

Protest not filed within 10 working days from date of initial adverse agency action (receipt of denial of protest) is untimely and not for consideration on merits.

Dumont Oscilloscope Laboratories, Inc. (Dumont), has protested the determination of the Air Force Logistics Command, Kelly Air Force Base, Texas, that its bid was nonresponsive to solicitation No. F41608-76-R-3612.

The essence of Dumont's protest is that the contracting officer did not evaluate the bid samples in accordance with either the Armed Services Procurement Regulation or the provisions of the solicitation. The finding that Dumont's sample was nonresponsive is contended to be a direct result of the improper evaluation.

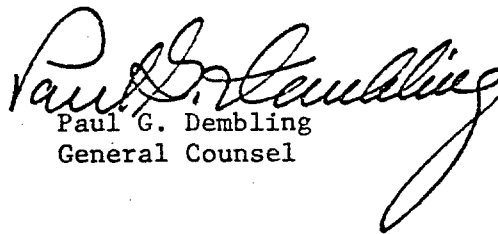
Dumont was notified by the Air Force on February 25, 1976, that its samples were unacceptable and that its offer had, therefore, been determined nonresponsive. By telex dated March 4, 1976, and letter dated March 5, 1976, Dumont protested the contracting officer's action. On April 5, 1976, Dumont received a letter from the Air Force denying its protest.

Section 20.2(a) of our Bid Protest Procedures (40 Fed. Reg. 17979 (1975)) urges protesters to first seek resolution of their complaints with the contracting agency. However, when the protest has been initially filed with the contracting agency, any subsequent protest to this Office must be filed no later than 10 working days from formal notification of actual or constructive knowledge of initial adverse agency action. Adverse agency action is defined in section 20.2(b) of our procedures as:

"* * * any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with an agency. * * *"

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Here, the date of initial adverse agency action was April 5, 1976, when Dumont received the denial of its protest from the Air Force. Therefore, the protest to be timely should have been filed here within 10 working days from April 5, 1976. Since the protest by Dumont was not filed (received) in our Office until April 21, 1976, it is untimely and not for consideration on the merits.


Paul G. Dembling
General Counsel